

No. 6596-4L-74/24570.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Haryana, Faridabad in respect of the dispute between the workman and the management of M/s Hindustan Structurals, Sector 24, Faridabad.

**BEFORE SHRI O. P. SHARMA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA, FARIDABAD**

**Reference No. 43 of 1974**

*between*

**THE WORKMAN AND THE MANAGEMENT OF M/S HINDUSTAN STRUCTURALS, PLOT NO. 155, SECTOR-24, FARIDABAD**

*Present:*

Shri Chaman Lal Oberoi, for the workman.

Shri Vinod Kapoor, Manager, for the management.

**AWARD**

The workman of M/s Hindustan Structurals, Plot No. 155, Sector-24, Faridabad had raised certain demands which were referred for adjudication to this Tribunal by order No. ID/FD/73/602/7890, dated 26th March, 1974 of the Governor of Haryana, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 with the following terms of reference :—

1. Whether the workmen should be supplied with uniforms ? If so, with what details ?
2. Whether the workmen are entitled to the grant of dearness allowance ? If so, with what details ?

The parties were called upon to put in their pleadings. They have arrived at an amicable settlement as per terms and conditions given in the memorandum of settlement dated 5th May, 1974 which is signed by six representatives of the workmen including Shri Chaman Lal Oberoi, General Secretary, Industrial Works Union (Regd.) Faridabad, who had given the demand notice leading to the present reference, Rajinder Singh, Moti Lal Sharma, Johru Din, Sona Pati, Chander Shekhar, Shri P. K. Singla, Partner and Shri Vinod Kapoor Factory Manager had signed the memorandum of settlement on behalf of the management. Statements of Shri Chaman Lal Oberoi and Shri Vinod Kapoor have been recorded.

In view of the above, no further proceedings are called for in the case and the award is given in terms and conditions of the memorandum of settlement dated 5th May, 1974 Ex. M-1 which shall form part of the award.

Dated 1st July, 1974.

O. P. SHARMA,

Presiding Officer,  
Industrial Tribunal, Haryana,  
Faridabad.

No. 622, Dated 12th July, 1974

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Department, Chandigarh as required under section 15 of the Industries Disputes Act, 1947.

Dated 1st July, 1974.

O. P. SHARMA,

Presiding Officer,  
Industrial Tribunal, Haryana,  
Faridabad.

**SETTLEMENT UNDER SECTION 18(1)  
OF THE INDUSTRIAL DISPUTES ACT, 1947**

Name of the Parties	: M/s. Hindustan Structural, Sector-24, Plot No. 155 Faridabad and its workmen.
Representing Employer.	: (1) Shri P. K. Singhla, partner (2) Shri Vinod Kapoor, Manager
Representing Workmen.	: (1) Shri Chaman Lal Oberoi, General Secretary, Industrial Union (Regd), Faridabad. (2) Shri Rajinder Singh (3) Shri Moti Lal Sharma (4) Shri Johru Din (5) Shri Sona Pati (6) Shri Chander Shekhar
	} Concerned workmen and Authorised Representatives.

**SHORT RACITAL OF THE CASE**

The demand notice dated 28th September, 1973 was served upon the Management and consequently the Government has referred the demand of Dearness Allowance and uniforms to the Hon'ble Industrial Tribunal, Haryana, Faridabad. After the reference orders the parties have come forward to negotiate on the demands across the table and with the result of lengthy negotiations the following settlement is arrived at between the parties.

**TERMS OF SETTLEMENT**

*Dearness Allowance :*

The Management is agreed to give an adhoc increase in wages of all their workers at the rate of Rs 00.60 paise per day in their daily rate of wages with effect from 1st April, 1974 and in consideration of that the demand of dearness allowance is deemed to be settled.

*Uniforms :*

The workmen are agreed to withdraws the demand of uniforms.

*3. National and Festival Holidays :*

The Management is agreed to give (Nine) National and Festival Holidays in a calender year and list of the Holidays is prepared with the consultation of the workers and will be sent to the Labour Inspector/Factory Inspector and will also be pasted on the notice board within a week's time.

*4. Statutory and Legal demands :*

The other demands in the demand notice dated 28th September, 1973 which are statutory and legal demands are considered by the Management and these demands, i.e.. Sick leave, Casual leaves, pay slip and overtime etc. will be regulated as provided under the law.

*5 Incentive Bonus Scheme :*

The parties are further agreed mutually to introduce an incentive Bonus Scheme to encourage the production of the Factory as under.

The Minimum Target of Production for the month of May, 1974 is to produce the products of worth Rs 3,00,000 (3 lacs) and if the production worth increases beyond this target up to Rs 4,00,000 (Rs 4 lacs) the workmen will get 7½% (7½ percent) of their earned wages as incentive Bonus and beyond 4,00,000 (4 lacs) and upto 5,00,000 (Rs 5 lacs) at the rate of 10 per cent of earned wages as incentive Bonus. This Incentive Bonus will be proportionaly adjusted according to the Production worth.

This settlement is signed on 5th of May, 1974 and copies of this settlement will be sent to the authorities prescribed.

1. (Sd.) . . . ,

(Sd). . . . ,

Signature of the  
Representative  
of the workmen.

Signature of the  
Representative  
of the Management.

2. (Sd.) . . . ,

3. (Sd.) . . . ,

4. (Sd.) . . . ,

5. (Sd.) . . . ,

6. (Sd.) . . . ,

*Witness :*

1. (Sd.) . . . ,

2. (Sd.) . . . ,

Dated 5th May, 1974.

No 6595-4L-74/24608—In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Haryana, Faridabad in respect of the dispute between the workmen and the management of M/S Panipat Cooperative Distillery Limited, Panipat.

BEFORE SHRI O. P. SHARMA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL,  
HARYANA, FARIDABAD

Application No 1 of 1973 under section 33-A, of the Industrial Disputes, Act, 1947

*Between*

SHRI DHARAMPAL PATHAK WORKMAN AND THE MANAGEMENT OF M/S PANIPAT COOPERATIVE DISTILLERY LIMITED, PANIPAT

*Present.—* Shri Onkar Parshad, for the workman.

Shri R. L. Gupta and Surinder Kaushal, for the management.

AWARD

Shri Dharam Pal Pathak a workman of M/s Panipat Cooperative Distillery, Limited, Panipat, has brought this complaint under section 33-A of the Industrial Disputes Act, 1947 with the allegations that during the pendency of his reference under section 10 of the Industrial Disputes Act the management had suspended him in contravention of the provisions of section 33 of the Act, and, therefore, the suspension order should be set aside and the management should be directed to pay him his full wages.

Notice of the complaint was given to the management while admitting the said pendency arising out of the demand of Shri Dharam Pal Pathak workman concerned for being designated as Bottling Supervisor, vide reference No. 102 of 1972. It has been contended that there has been no violation of the provisions of section 33 of the Act because he has been charged with acts of mis-conduct and the suspension order has been lawfully made pending the enquiry for which the Enquiry Officer has been appointed. The following issue arose for determination in the case.

Whether there has been a contravention of provisions of section 33 of the Industrial Disputes Act, 1947, as alleged by the complainant? If so, what relief he is entitled to?

Shri Dharam Pal Pathak complainant (workman concerned) has made his own statement alleging that the charge sheet in respect of certain allegations pertaining to 7th December, 1972 and 9th December, 1972 was given to him on 15th December, 1972 and he was simultaneously placed under suspension in violation of the provisions of law. According to him, the management had no power to suspend him during the pendency of his dispute referred to above. He has further stated that for the first two months the management paid him 50% suspension wages and thereafter only 25% suspension wages. He has further stated that the enquiry was concluded on 26th February, 1973 but no final decision had been taken by the management and he was still getting 25% of his wages. The management has led no evidence in the case.

The case has been argued on both sides and I have given due consideration to the material on record.

The facts are more or less admitted. It is common ground between the parties that the present workman had raised a demand for being designated as Bottling Supervisor and the same having not been accepted by the management, the dispute has been referred for adjudication to this Tribunal, in exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 and has been registered as Reference No. 102 of 1972. That dispute relates to several demands raised by a large number of workmen in the Distillery, Shri Dharan Pal Pathak, the present complainant being only one of the workmen concerned and the demand for being designated as Bottling Supervisor no doubt relates to him alone. The management has further admitted that he was placed under suspension on 15th of December, 1972 but pending enquiry into the charges of misconduct which had been communicated to him and after considering his explanation an enquiry officer had been appointed to hold the enquiry into those charges. With regard to the arrears of the suspension wages it has been stated that this workman has neither been attending the factory after the date of the suspension as required by law nor has he come forward to collect his dues.

So, the main question that arises for consideration in the case is whether the management has contravened the provisions of section 33-A by placing this workman under suspension during the pendency of the enquiry into the charges of mis-conduct or, in other words, whether an alteration in the conditions of service has been brought about without obtaining the prior permission of this Tribunal for the aforesaid action taken against him. It has been urged in the complaint that the charges are vague and bogus. The charge sheet has not been placed on record and apart from the general allegations that the provisions of section 33 have been violated, it has not been shown as to in what manner the said provisions have been violated or contravened.

There are no certified standing orders of the company nor has any document been brought on record to prove any specific contract of service between the parties with regard to the matter in issue. Shri Dharan Pal Pathak complainant has stated that he is governed by the Model Standing Orders. I have very carefully gone through the relevant Model Standing Orders which, however, do not help him and reference may usefully be made to sub-clause (l) (a) of clause (2) of the standing order 20 the relevant portion of which reads as under :—

(a) Where a disciplinary proceeding against a workman is contemplated or is pending or where criminal proceeding against him in respect of any offence was under investigation or trial and the employer is satisfied that it is necessary and desirable to place the workman under suspension, he may, by order in writing suspend him with effect from such date as may be specified in the order. A charge sheet shall also be served on the workman within a week from the date of suspension setting out the details of the alleged misconduct and shall contain the name of the Enquiry Officer and the place where the enquiry shall be held. The workman shall be given an opportunity for explaining the circumstances alleged against him.

From the perusal of the above provisions in the Model Standing Orders, it would be clear beyond any shadow of doubt that the management is competent to place a workman under suspension who has been charged with mis-conduct pending the enquiry into the charge or charges levelled against him which is exactly the case here. According to the showing of the workman himself he has been placed under suspension in respect of certain acts of misconduct although he has alleged that the charges are vague and bogus. This has to be seen by the Enquiry Officer. The validity or otherwise of the alleged acts of misconduct can not be gone into at this stage. In any case, the fact remains that according to the Model Standing Orders by which the workman is governed it is within the competence of the management to suspend him pending enquiry into the charges of mis-conduct and it can not be said by any stretch of imagination that by doing so the management has contravened the provisions of section 33 of the Industrial Disputes Act, 1947.

The learned representative of the complainant has further argued that the suspension wages have not been paid to the workman in accordance with the Model Standing Orders referred to above. He has admittedly been paid suspension wages at 50 per cent for the first two months. The management has alleged that he is not coming forward to collect the arrears of the suspension wages nor has he attended the factory daily as required by law. The statement of the complainant is silent on this point and inspite of the specific plea raised in the written statement he has not said a word in his statement recorded in the proceeding that he had been attending the factory daily or for that matter on any day after he was placed under suspension.

So, taking into consideration all the facts and the circumstances of the case discussed above I am of the considered view that the complainant has failed to show as to how the provisions of section 33 of the Act have been contravened by the management so as to validate the present complaint under section 33-A of the Act. The issue accordingly decided against him and the complaint shall, in the result, stand dismissed but without any order as to costs.

O. P. SHARMA,

Presiding Officer,

Industrial Tribunal, Haryana,  
Faridabad.

Dated 12th July, 1974

No. 620, dated the 12th July, 1974.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

Dated 12th July, 1974.

O. P. SHARMA,  
Presiding Officer,  
Industrial Tribunal, Haryana,  
Faridabad.

The 25th July, 1974

No. 6188-Lab-74/24546.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Haryana, Rohtak, in respect of the dispute between the workman and the management of M/s Taraori Co-operative Marketing-cum-Processing Society Ltd., Taraori, Karnal:—

BEFORE SHRI O.P. SHARMA, PRESIDING OFFICER, LABOUR COURT, HARYANA, ROHTAK

Reference No. 243 of 1971

between

SHRI PHOOL CHAND AND THE MANAGEMENT OF M/S STARAORI CO-OPERATIVE MARKETING-CUM-PROCESSING SOCIETY LTD., TARAORI (KARNAL)

Present.—

Shri Harbans Lal, for the workman.

Shri Surinder Kaushal, for the management.

#### AWARD

The following dispute between the management of M/s Taraori Co-operative Marketing-cum-Processing Society Ltd., Taraori (Karnal) and one Shri Phool Chand was referred for adjudication to this court by order No. ID/KNL/136-A-71/35622, dated 30th November, 1971, of the Governor of Haryana, in exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947:—

"Whether the termination of services of Shri Phool Chand was justified and in order? If not, to what relief is he entitled?"

Usual notices were given to the parties and they put in their respective pleadings. The management contested the claim of Shri Phool Chand pleading *inter alia* that he was not a workman as defined under the Industrial Disputes Act, 1947. The following issues arose for determination in the case:—

1. Whether Shri Phool Chand was a workman of M/s Taraori Co-operative-cum-Processing Society, Ltd., Taraori?
2. Whether the respondent Society has been brought under liquidation? If so, with what effect?
3. Whether the termination of services of Shri Phool Chand was justified and in order? If not, to what relief is he entitled?

Shri Phool Chand, claimant, has made his own statement as W.W.1 and placed reliance upon one document, namely, copy of an agreement, dated 7th October, 1971, Ex. W.W. 1/1. In cross-examination he has admitted his signatures on the letter of authority in favour of S/Shri Brij Lal and Harbans Lal, Ex. M. 3, demand notice, dated 17th August, 1971, Ex. M. 4 and also on the bills, Exs. M. 5 and M. 6.

On the other hand, the management has examined three witnesses including Shri Kishan Lal, Salesman, M.W.1, Shri Dhan Singh, Commission Agent, M.W.2 and Shri Vishan Singh, Liquidator of the respondent Society, M.W.3. The documentary evidence relied upon by the management consists of letter, dated 1st August, 1969, written by Shri Phool Chand to the Health and Development Minister, Haryana, Chandigarh, Ex. M.1, details of the bills submitted by him to the respondent Society, Exs. M.2, M.5 and M.6.

The case has been fully argued on both sides. Written arguments have also been filed on behalf of Shri Phool Chand, claimant and I have carefully gone through the same.

The first and the foremost question that arises for consideration in the case is whether Shri Phool Chand, Claimant, is a workman as defined under section 2(s) of the Industrial Disputes Act, 1947. The burden was on him to establish this fact covered by issue No. 1 by bringing on record cogent and convincing evidence. But after a very

close scrutiny of the evidence led on both sides, oral as well documentary, I am constrained to observe that he has simply failed to discharge this burden. There is no evidence worth consideration that he performed any skilled, un-skilled, technical or manual duties to justify his claim to be described as a workman as defined under section 2(s) of the Act. The plea of the management that he was only a Chaudhry of the Palledars engaged in the loading or unloading of the fertilizer finds support in his own application, Ex. M. 1, addressed by him to the Health and Development Minister, Haryana, on 1st August, 1969. In this application he has stated in clear and unambiguous words that he had been working as a Chaudhry of the Palledars of the respondent Society for the last 12 years. He has not brought on record any appointment letter describing him as a Palledar himself or a workman of the Society in any other capacity. According to the sworn testimony of Shri Vishan Singh who has since been appointed liquidator of the Society, his name does not appear in the Attendance register or the Payment of Wages Register. Had he been a workman of the Society in any capacity it was but natural that his name should have been entered as such in the above mentioned two registers. The contention of the management finds further support in the testimony of two other witnesses examined in the case, namely, Shri Anant Ram, Salesman and Shri Dhan Singh, Commission Agent who have both deposed that Shri Phool Chand present claimant had worked as Chaudhry of the Palledars with the respondent Society and thereafter with some other concerns, namely, M/s Aggarwal Rice Trading Company and Shri Sewa Ram. According to their testimony the Palledars actually engaged in the loading and un-loading work were employed by Shri Phool Chand Chaudhry and he used to submit the bills for the recovery of the dues of the Palledars, and disburse the same to them after collecting the amount in lump sum from the respondent Society which had nothing to do directly with the Palledars or the labour engaged by the Chaudhry as such.

Much stress has been laid on behalf of Shri Phool Chand on an agreement, dated 7th October, 1970, Ex. W.W. 1/1 which purports to have been arrived at between him and the respondent Society for payment of Rs. 3,454/- to him. I am afraid, this document also does not help him to advance his claim as a workman within the meaning of the Industrial Disputes Act, 1947. The agreement is said to have been signed by one Shri Ravinder Singh, Manager of the respondent Society. He has not been examined as a witness in the case and according to the statement on oath of Shri Vishan Singh, M.W. 3, there was no Manager of the respondent Society by the name of Shri Ravinder Singh.

From the facts discussed above, it would thus appear that Shri Phool Chand, the present claimant, was not a workman but only a Chaudhry or Contractor who had to supply labour (Palledars) to the respondent Society for the purposes of loading and un-loading the fertilizer at various places according to the requirements. He had no other duty to perform as a workman within the meaning of section 2(s) of the Industrial Disputes Act, 1947. There mere fact that he engaged the labour, submitted the bills of their dues, collected and disbursed the amount to the labour would not make him a workman himself.

There is still another aspect of the case which deserves consideration here. According to his own showing, his services were terminated on 7th December, 1968. Strongly enough, he kept quiet for about three years and gave the demand notice, Ex. M. 4, asking for reinstatement on 17th August, 1971. Had he been a workman entitled to claim his remedy against the above order by taking resort to proceedings under the Industrial Disputes Act, it is not believeable that he would have waited for this long period of about three years to raise the dispute.

So, taking into consideration all the facts and the circumstances of the case discussed above, I am of the considered view that Shri Phool Chand, the present claimant does not come within the definition of a workman as given in section 2(s) of the Industrial Disputes Act, 1947. His authorised representative has not been able to satisfy me to the contrary. Issue No 1 is accordingly decided against him.

In view of my above finding on issue No. 1, it is not necessary to go into the other issues involved in the case for the simple and obvious reason that Shri Phool Chand, claimant, being not a workman as defined in the aforesaid Act, no industrial dispute existed between the parties as defined under section 2(k) of the Act which could validly be referred for adjudication to this court, whether as an individual dispute under section 2-A or as a collective dispute under section 10 of the Act. In the circumstances, Shri Phool Chand, claimant, is not entitled to any relief by way of reinstatement or payment of dues in the present reference, which itself is bad in law and without jurisdiction as discussed above. The award is made accordingly but without any order as to costs.

O. P. SHARMA,

Dated 29-6-1974

Presiding Officer,  
Labour Court, Haryana,  
Rohtak.

No. 1625, dated 8th July, 1974

Forwarded (four copies) to the Secretary to Government of Haryana, Labour & Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

O. P. SHARMA,

Presiding Officer,  
Labour Court, Haryana,  
Rohtak.